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Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1997

MATTHEW E. JACKSON, JR.
Petitioner,
v.

OFFICE OF DISCIPLINARY COUNSEL,
Respondent.

SUPPLEMENTAL APPENDIX
to
PETITION FOR WRIT OF CERTIORARI
Petition for a Writ of Certiorari
to the Supreme Court of Pennsylvania, Western District

Matthew E. Jackson, Jr., Esquire
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16 pp

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IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF	)
DISCIPLINARY COUNSEL	)NO. 372 Disciplinary
Petitioner	)Docket No 3 -Supreme
	)Court
v.	)No 95 DB 94 Disciplinary
MATTHEW E. JACKSON, JR.	)Board
Respondent.	)Attorney Registration
	)No. 20147
	)(Allegheny County)

ORDER

PER CURIAM

AND NOW, this 13th day of November, 1997, upon consideration of the Report and Recommendation of the Disciplinary Board dated September 11, 1997, it is hereby

ORDERED that MATTHEW E. JACKSON, JR., be subjected to PUBLIC CENSURE by the Supreme Court.

It is further ORDERED that Respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa. R.D.E.

Chief Clerk

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	) NO. 95 DB 94
Petitioner	) Attorney Registration
	) No. 20147
v.	)
MATTHEW E. JACKSON, JR.	) (Allegheny County)
Respondent.	)

REPORT AND RECOMMENDATION OF THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF PENNSYLVANIA

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, The Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

Office of Disciplinary Counsel filed a Petition for Discipline against Respondent, Matthew E. Jackson, Jr., on September 15, 1994. The Petition alleged that Respondent engaged in misconduct with respect to a medical malpractice action he undertook on behalf of his clients, the Rishells, in violation of Rule 1.3, 1.4(b), and 1.15(b). Respondent filed an Answer on November 15, 1994.

A hearing was held on February 22, 1995 before Hearing Committee 4.16 comprised of Chair Jan Reid Van Gorder, Esquire and Members Diane Bar Quinlan, Esquire, and Michael J. Supinka, Esquire. Respondent was represented by Velma Jackson, Esquire. Petitioner was represented by Angelea Allen Mitas, Esquire. The Committee filed a preliminary report on

March 7, 1995 and found a prima facie violation. After briefs were filed to the Committee by the parties, the Committee filed a final report on February 28, 1997 and recommended that after Respondent is reinstated from a suspension in another case, he be placed on probation for six months and take an ethics course.

Petitioner filed a Brief on Exceptions on March 20, 1997 and contends that Respondent must receive separate discipline for this matter, and he should be subject to at least public censure. Respondent filed a Brief on Exceptions and Opposing Exceptions on April 9, 1997 and contends that the Petition for Discipline should be dismissed.

This matter was adjudicated by the Disciplinary Board at the meeting held on June 25, 1997.

II. FINDING OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is now located at Suite 3710, One Oxford Centre, Pittsburgh, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter Pa.R.D.E.), with the power and the duty to investigate all matters involving the alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Matthew E. Jackson, Jr., Esquire was born in 1944 and was admitted to practice law in the Commonwealth of Pennsylvania in 1974. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. On February 20, 1995, Mr. and Mrs. Rishell (hereinafter the Rishells) executed a Contingent Fee Agreement with Respondent for his representation in a medical malpractice action arising from the alleged improper diagnosis and treatment of Mr. Rishell's heart condition. (PE 14; N.T. 82)

4. On or about July 8, 1995, Respondent filed a Complaint in

Trespass on behalf of the Rishells against Presbyterian University Hospital, Paul B. Nelson, M.D. and Bernard A. Grumet, M.D. (hereinafter referred to as Presbyterian University Hospital, Dr. Nelson and Dr. Grumet, docketed at No. GD 85-5995, in the Court of Common Pleas of Allegheny County. (PE 1; PE 2: NT 24)

5. Through their respective attorneys, Presbyterian University Hospital, D. Nelson and Dr. Grumet, filed Answers to the Complaint. (PE 1; N.T. 25)

6. Upon request by Respondent, Mr. Rishell issued a check to Respondent dated July 1, 1985, in the amount of $188.50, designated for reimbursement of monies Respondent had expended in filing suit and acquiring medical records. (PE 15a; N.T. 84)

7. Upon request by Respondent, Mr. Rishell issued a check dated December 18, 1985, in the amount of $1,000.00 to the Respondent, for anticipated costs and expenses in retaining a medical expert, and designated thereon for Respondent's escrow account. (PE 15b; N.T. 85)

8. Upon request by Respondent, Mr. Rishell issued a check dated December 31, 1986, in the amount of $500.00, for anticipated costs and expenses in retaining a medical expert, and designated thereon for Respondent's escrow account. (PE 15b; N.T. 85)

9. In about January, 1987, the Rishells moved from New Brighton, Pennsylvania, to Lutz, Florida, and notified Respondent of their new address. (N.T. 80, 88)

10. On April 21, 1987, counsel for Dr. Grumet served supplemental Interrogatories on Respondent as counsel for the Rishells. (PE 21; N.T. 28)

11. By letter dated May 27, 1987, counsel for Dr. Grumet requested that Respondent respond to those Interrogatories by

June 11, 1987. (PE 21; N.T. 28)

12. Respondent did not file an Answer to the Interrogatories by June 11, 1987. (N.T. 30)

13. By Order of Court dated July 10, 1987, the Honorable Stanton Wettick ordered that the supplemental Interrogatories directed to Mr. Rishell be answered within thirty (30) days from the date of the issuance of the Order, or Mr. Rishell would be barred from introducing at the time of trial any and all evidence pertaining to his physical and mental condition. (PE &; N.T. 30-31)

14. Some time between July 10, 1987 and July 15, 1987, Respondent submitted Answers to the supplemental Interrogatories. (N.T. 32)

15. In or about the early summer months of 1989, Respondent telephoned Mr. Rishell and discussed with him questions of a kind similar to those set forth in the Interrogatories. (N.T. 91)

16. Subsequent to his telephone conversation with Respondent, in the early summer months of 1989, Mr. Rishell made numerous attempt to contact Respondent by telephone, without success. (N.T. 92-93)

17. By letter sent to Respondent in May, 1990, Mr. Rishell requested a status report on his case, as well as an accounting of funds he provided Respondent. (N.T. 94)

18. Respondent did not reply to Mr. Rishell's letter of May, 1990. (N.T. 99)

19. Sometime after May 1990, but prior to September, 1990, after he was able to contact Respondent by telephone, Mr. Rishell issued to Respondent Check number 1645 in the amount of $1,700.00 for anticipated costs and expenses in retaining a medical expert. (PE 36; N.T. 100-101)

20. Check number 1645, in the amount of $1,700, was received by Respondent. (N.T. 207)

21. On August 23, 1990, Attorney Paula Koczan, on behalf of Dr. Grumet, served Respondent with a third set of Interrogatories and Requests for Production. (PE 24; PE 41; N.T. 37-38)

22. Respondent did not answer the third set of Interrogatories and Requests for Production, nor did he discuss or review them with Rishells. (N.T. 40, 91)

23. On November 2, 1990, Attorney Koczan mailed to Respondent a copy of a Motion to Compel Discovery, along with a notice that said Motion would be presented to the Court on November 9, 1990. (PE 25; N.T 41)

24. Respondent did not notify the Rishells of, or discuss with them, his receipt of that Motion to Compel Discovery. (N.T. 92, 110-111)

25. On November 9, 1990, Judge Wettick issued an Order of Court which required the Rishells to submit verified Answers to Dr. Grumet's third set of Interrogatories and Requests for Production within fifteen (15) days of the date of the Order, or suffer sanctions. (PE 8; N.T. 45-46)

26. Respondent did not notify the Rishells of, or discuss with them, the issuance of Judge Wettick's November 9, 1990 Order or its ramifications. (N.T. 92, 110-111)

27. Respondent did not comply with Judge Wettick's November 9, 1990 Order.

28. By letter dated November 14, 1990, Mr. Rishell informed Respondent that this was his second written request for information regarding his case, that he had been unable to contact Respondent for the past several months without success, and that he wanted Respondent to advise he and his wife of the status of his representation and provide them with an accounting.

(PE 17, N.T. 111-112)

29. Respondent did not reply to Mr., Rishell's November 14, 1990 letter. (N.T. 114, 251)

30. Between December 1990, and April, 1990, the Rishells attempted to contact Respondent by telephone to determine the status of their case. (N.T. 118-119)

31. Respondent did not return any of their telephone calls. (N.T. 119)

32. On January 25, 1991, Attorney Koczan mailed to Respondent a copy of a Motion for Sanctions, with notice that the Motion would be presented on February 1, 1991. (PE 27; N.T. 50)

33. On February 1, 1991, Judge Wettick issued an Order directing Plaintiffs to comply with his prior Order of Court dated November 9, 1990 within thirty (30) days, and awarding attorney's fees to counsel for Dr. Grumet. (PE 9; N.T. 51)

34. Respondent did not comply with the February 1, 1991 Order of Court. (N.T. 56)

35. Respondent did not inform the Rishells of the February 1, 1991 Order of Court, or discuss with them its ramifications. (N.T. 119)

36. On March 5, 1991, Attorney Koczan mailed to Respondent a copy of a subsequent Motion for Sanctions, with notice that the Motion would be presented to the Court on March 8, 1991. (PE 30; N.T. 56)

37. On March 8, 1991, no one appeared on behalf of the Rishells, and Judge Wettick issued an Order of Court prohibiting them from introducing at the time of trial any expert testimony and any and all medical records, hospital records, or hospital bills. (PE 10; N.T. 56-57)

38. Respondent did not inform the Rishells of the Order of Court issued by Judge Wettick on March 8, 1991, or its ramifications. (N.T. 119)

39. Respondent spoke with Mr. Rishell by telephone in April 1991 and informed him that approximately $1,200 of his money remained in Respondent's escrow account, apologized for not contacting him, and advised him that the case was in jeopardy but not why, and that he wanted to drop the case. (N.T. 119-120, 132)

40. During their April, 1991 telephone conversation, Mr. Rishell told Respondent that he wanted to meet with him to discuss the case. (N.T. 120)

41. During that April, 1991 telephone conversation, Respondent told Mr. Rishell he would travel to Florida during the Memorial Day weekend to meet with them. (N.T. 121)

42. By letter dated May 30, 1991, Respondent informed the Rishells that he was experiencing difficulty in scheduling his trip to Florida, that he had arranged for a flight to Tampa, to arrive on July 13, 1991, and that they should advise him if that was inconvenient. (PE 18; N.T. 122)

43. Shortly after receipt of that letter, Mr. Rishell advised Respondent that the July 13, 1991 meeting date was convenient. (N.T. 130)

44. Respondent did not meet with the Rishells in Florida on July 13, 1991, or at any time thereafter. (N.T. 129)

45. Respondent did not contact the Rishells in any manner to explain his absence from the pre-arranged meeting scheduled for July 13, 1991. (N.T. 130)

46. After July 13, 1991, Respondent did not telephone the Rishell, or otherwise communicate with them about their malpractice action. (N.T. 130-132)

47. On September 3, 1991, Attorney Koczan presented to Judge Horgos a Motion for Summary Judgment on behalf of Dr. Grumet; it was granted on that day. (PE 1; N.T. 60)

48. On September 10, 1991, counsel for defendants in the medical malpractice action filed Praecipes for Entry of Judgment against the Rishells. (PE1)

49. Respondent did not contact the Rishells in any manner to inform them of the Motion for Summary Judgment, the resulting Order of Court, or the Entry of Judgment against them. (N.T. 131-132)

50. Respondent did not provide the Rishells with a full accounting of the monies they paid him. (N.T. 131-132)

51. Respondent has a prior record of discipline consisting of an Informal Admonition administered on November 9, 1992 and a one year and one day Suspension ordered on August 31, 1995. The basis for the Suspension was Respondent's repeated failure to remit $150.00 to a stenographer, which monies he originally received from his client for this purpose.

III. CONCLUSION OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1,3 -(Failing to act with reasonable diligence and promptness in representing a client);

2. RPC 1.4(a) - (Failing to keep a client informed about the status of a matter and failing to promptly comply with reasonable requests for information);

3. RPC 1.4(b) - (Fail;ing to explain a matter to the extent necessary to permit a client to make informed decisions regarding the representation); and

4. RPC 1.15(b) - (Failing to promptly deliver to a client or

third person any funds or other property that a client or third person is entitled to receive and, failing to promptly render a full accounting regarding such property, upon request by a client or third person).

IV. DISCUSSION

This matter is before the Board on a Petition for Discipline filed against Respondent on the basis of his actions in a medical malpractice case brought on behalf of Richard and Ruth Rishell. The record indicates that Respondent began work on the case in 1985 and pursued it diligently on behalf of Richard and Ruth Rishell. He conducted discovery by way of depositions of both the Rishells and defendant doctors. Interrogatories had been submitted and answered by various parties. After that time, he stopped working on the case. He failed to answer a third set of Interrogatories and Requests for Production, and failed to acknowledge receipt of these pleadings or review them with his clients. He failed to appear in court to defend motions filed by the defense as a result of Respondent's inactivity. Sanctions were obtained against Respondent which resulted in prejudice to his clients' case. Respondent failed to account for the disposition of monies supplied to him for expenses, although he was requested to do so by his clients. Respondent's actions violated Rules 1.3, 1.4(a), 1.4(b), and 1.15(b).

The Committee determined that Respondent violated the above Rules; however, it decided that since Respondent was currently on suspension for violations in a separate case, it would not impose a separate discipline. Instead, the Committee recommended that if Respondent is reinstated from the one year and one day suspension, he should serve a six month period of probation and take an ethics course as a sanction for the instant case. The Committee's attempt to craft a considerate sanction is well-meaning, but such sanction is not appropriate under the Rules of Disciplinary Enforcement. In effect, the Committee is conditioning Respondent's discipline in this matter on his future reinstatement.

Two problems arise pertinent to this recommendation. The first issue is that conditional reinstatement is not provided for by the Rules of Disciplinary Enforcement. The Rules do not permit

this because when an attorney is granted reinstatement, he or she has already shown moral fitness, competence and learning in the law and is fit to practice law in Pennsylvania. A requirement of probation or an ethics class after reinstatement negates the previous demonstration of fitness to practice. Also, the language of the Committee's recommendation is such that Respondent may never be sanctions for his violations in the instant case if he decides not to petition for reinstatement or his reinstatement is denied.

The second issue is that the Committee attempted to dovetail discipline in this case with a sanction imposed in a separate and distinct matter. While the Committee appropriately considered Respondent's suspension in In re Anonymous No. 81 DB 93, 29 Pa. D & C 4th 101 (1995) as an aggravating circumstance, it was not appropriate to combine the sanctions. The circumstances of the case in which Respondent was suspended have nothing to do with the facts of the instant case. To make Respondent's reinstatement in that case provisional on receiving probation for this case, even if such a scheme was permitted under the Rules, is not logical. Since the Committee found that Respondent violated Rules of Professional Conduct, it should have recommended separate discipline for his misconduct.

There are several prior cases addressing misconduct similar to that in the instant case. In the case of In re Anonymous No. 24 DB 89, 8 Pa. D & C 4th 207 (1990), an attorney failed to take any action in an estate matter and misrepresented the status of the case to the client. The attorney had a prior history of discipline, including a two year suspension that had been imposed during the pendency of No. 24 DB 89. The Board recommended a one year suspension consecutive to the two year suspension. The Supreme Court affirmed this recommendation. The facts of the cited case are more egregious than the instant case, as Respondent herein proceeded accordingly on the case for five years, then stopped. Also, the attorney in the cited case violated Rules involving misrepresentation and conduct adversely reflecting on his fitness. Respondent herein was not charged with any similar violations. In the case of In re Anonymous No. 128 DB 91, 23 Pa. D & C 4th 360 (1994), an attorney failed to keep the client informed about the case, failed to transfer the file,

failed to provide an accounting, and failed to return the unearned portion of the retainer fee. The attorney had a prior history of discipline consisting of three informal admonitions, one private reprimand, and a six month suspension. After considering these factors, the Board recommended and the Court approved a six month period of suspension. In the case of In re Anonymous No. 47 DB 91, 18 Pa. D & C 4th 418 (1993), an attorney failed to act with diligence in pursuing a case and failed to return the entrusted property after termination of representation. She had a prior history of two private reprimands and one informal admonition. She presented very strong character testimony at her hearing. The Board imposed a private reprimand. The cited case is less serious that the instant case, as the attorney's prior history was less serious.

Review of the case law suggests that many of the case resulting in suspension involve violations of Rule 8.4, which subsections address misrepresentation, dishonesty, conduct prejudicial to the administration of justice, and criminal acts that reflect on the attorney's fitness as a lawyer. A finding of a Rule 8.4 violation demonstrates the presence of more serious misconduct and increases the severity of the resulting disciplinary sanction. The instant case does not involve such misconduct. A case involving violations of Rules 1.3, 1.4(a), 1.4(b), and 1.15(b), with no aggravating circumstances, would normally warrant a less severe sanction than a suspension, perhaps private discipline. Respondent's prior history of a one year and one day suspension and an informal admonition aggravates the circumstances of this case and changes the nature of it.

The totality of the circumstances in this matter warrant a sanction of a public censure. This is an appropriate sanction considering the misconduct involved and Respondent's prior history.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Matthew E. Jackson, Jr., receive a Public Censure from the Supreme Court of Pennsylvania.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

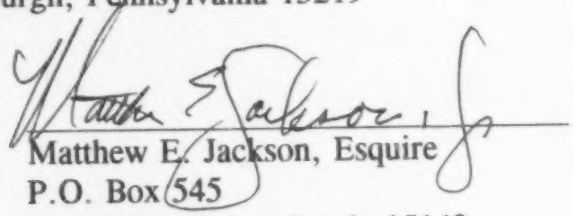
By: William R. Caroselli, Member

Date: September 11, 1997

CERTIFICATE OF SERVICE

This certifies that on 3-16, 1998, a true and correct copy of the within Supplemental Appendix was transmitted to the person listed below, by first class mail, as follows:

Angelea Allen Mitas
Assistant Disciplinary Counsel
Suite 400, Union Trust Building
501 Grant Street
Pittsburgh, Pennsylvania 15219



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